

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

Khammesherma Smith,
Plaintiff,
vs.

Civil Action No. 6:24-cv-5210-CMC

Inmate Reynolds; Inmate Snails; Inmate
Gibbs; Trustee Josey; Tyrone Cook, Jr.,
Defendants.

ORDER

This matter is before the court on Plaintiff's Complaint, alleging violations of his constitutional rights. ECF No. 1. In accordance with 28 U.S.C. § 636(b) and Local Civil Rule 73.02 (B)(2)(d), D.S.C., the matter was referred to United States Magistrate Judge Kevin F. McDonald for pre-trial proceedings.

Plaintiff filed a motion to proceed in forma pauperis with his Complaint. ECF No. 2. On October 15, 2024, the Magistrate Judge issued a Report and Recommendation ("Report") recommending Plaintiff's motion for leave to file *in forma pauperis* be denied as he has run afoul of the "three strikes" rule of the Prison Litigation Reform Act, and the instant filing does not meet any of the exceptions. ECF No. 9. The Magistrate Judge advised Plaintiff of the procedures and requirements for filing objections to the Report and the serious consequences if he failed to do so. Plaintiff failed to file objections or any other filing with this court, and the time to do so has expired.

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the court. *See Mathews v. Weber*, 423 U.S. 261 (1976). The court is charged with making a *de novo* determination of any portion of the Report of the Magistrate Judge to which a specific objection

is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or recommit the matter to the Magistrate Judge with instructions. *See* 28 U.S.C. § 636(b). The court reviews the Report only for clear error in the absence of an objection. *See Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (stating that “in the absence of a timely filed objection, a district court need not conduct a *de novo* review, but instead must only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.”) (citation omitted).

After a review of the record, the applicable law, and the Report and Recommendation of the Magistrate Judge, the court finds no clear error. Accordingly, the court adopts the Report by reference in this Order. Plaintiff has had multiple strikes against him, as detailed in the Report. Nor does Plaintiff allege he is in imminent danger of serious physical injury.¹ Plaintiff shall have twenty-one (21) days from the date of filing of this order to pay the filing fee in full (\$405). If Plaintiff does so, this matter shall be re-referred to the Magistrate Judge for a review of Plaintiff’s Complaint. If he fails to do so, this action will be deemed dismissed without prejudice and without issuance and service of process.

IT IS SO ORDERED.

s/Cameron McGowan Currie
CAMERON MCGOWAN CURRIE
Senior United States District Judge

Columbia, South Carolina
November 12, 2024

¹ The court also agrees with the Magistrate Judge it appears many, if not all, Defendants in this action are not state actors and thus not amenable to suit under § 1983.